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Findlay Automotive Group, Inc.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ROBERT MICHAEL NICHOLS,

Plaintiff,

vs.

FINDLAY AUTOMOTIVE GROUP, INC.,

Defendant.

Case No. 2:12-cv-00093-KJD-VCF

**STIPULATION AND
PROTECTIVE ORDER**

Plaintiff Robert Michael Nichols (“Nichols”) on the one hand, and Defendant Findlay Automotive Group, Inc. (“Findlay”) on the other hand, by and through their respective counsel of record, hereby agree and stipulate to the entry of this protective order (“Order”) pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. The following shall govern the treatment of confidential information produced by a party (“Producing Party”) to any other party (“Receiving Party”), in the course of this civil action, as follows:

1. GOOD CAUSE.

Disclosure and discovery activity in this action are likely to involve production of highly sensitive financial, business, or proprietary information, or other confidential or private information, that has not been disseminated to the public at large, which is not readily discoverable by competitors, and has been the subject of reasonable efforts by the respective

1 parties and/or third parties to maintain its secrecy, and for which special protection from public
 2 disclosure and from use for any purpose other than prosecuting this litigation is warranted.
 3 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
 4 Stipulated Protective Order.

5 The parties acknowledge that this Stipulated Protective Order does not confer blanket
 6 protections on all disclosures or responses to discovery and that the protection it affords extends
 7 only to the limited information or items that are entitled under the applicable legal principles to
 8 treatment as confidential. The parties further acknowledge that this Stipulated Protective Order
 9 creates no entitlement to file confidential information under seal, nor does anything herein
 10 prejudice the right of any party to object to the production of any discovery material that is
 11 legally protected from disclosure.

12 **2. DEFINITIONS AND PROVISIONS GOVERNING CONFIDENTIALITY**

13 2.1. Party: any party to this action, including all of its officers, directors, employees,
 14 consultants, retained experts, and counsel (including their support staff).

15 2.2. Disclosure or Discovery Material: all items or information, regardless of the
 16 medium or manner generated, stored, or maintained (including, among other things, testimony,
 17 transcripts, or tangible things) that are produced or generated in disclosures, depositions,
 18 subpoenas, or responses to discovery in this matter.

19 2.3 “CONFIDENTIAL” Information or Items: Disclosure or Discovery Material
 20 that qualifies for protection under standards developed under Fed. R. Civ. P. 26(c), which shall
 21 only be disclosed to any Party to this litigation, as set forth in section 7.2 below. Such
 22 information should fall into, but is not limited to, one or more of the following categories: (i)
 23 sales, marketing, product, or service development strategies, tactics, or plans; (ii) sketches or
 24 mock-ups of designs; (iii) financial data; (iii) costs of doing business; (iv) customer lists; (v)
 25 business agreements and contracts; (vi) licensing negotiations and agreements; and (vi) third-
 26 party information covered by an obligation of confidentiality.

27 2.4. “ATTORNEYS’ EYES ONLY” Information or Items: Disclosure or Discovery
 28 Material that is extremely sensitive — such as trade secrets, or highly sensitive business

1 strategies, plans, or developments — and whose disclosure to any person other than the parties’
2 respective outside counsel, as set forth in section 7.3 below, would create a substantial risk of
3 serious injury that could not be avoided by less restrictive means.

4 2.5. Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party, as defined herein.

6 2.6. Producing Party: a Party or non-party that produces Disclosure or Discovery
7 Material in this action.

8 2.7. Designating Party: a Party or non-party that designates information or items that it
9 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “ATTORNEYS’
10 EYES ONLY.”

11 2.8. Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY” and shall also include abstracts,
13 compilations, or summaries of documents or information that is designated as
14 “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

15 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained
16 to represent or advise a Party in this action.

17 2.10. In-House Counsel: attorneys who are employees of a Party and who regularly
18 provide legal advice as part of their job duties.

19 2.11. Counsel (without qualifier): Outside Counsel and In-House Counsel (as well as
20 their support staffs).

21 2.12. Retained Expert or Consultant: a person with specialized knowledge or
22 experience in a matter pertinent to the litigation who has been retained by a Party or its counsel
23 to serve as an expert witness or as a consultant in this action and who is not a past or a current
24 employee, or scheduled to become an employee, of a Party. This definition includes a
25 professional jury or trial consultant retained in connection with this litigation.

26 2.13. Professional Vendors: persons or entities that provide litigation support services
27 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
28 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

1 **3. SCOPE**

2 Any Protected Material may not be disseminated or disclosed outside the parameters of
3 this Stipulated Protective Order, subject to the terms thereof, whether that disclosure embodies
4 the entirety of a designated document or any portion or segment thereof.

5 **4. DURATION**

6 Even after the termination of this litigation, the confidentiality obligations imposed by
7 this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise
8 in writing or a court order otherwise directs. Nothing contained herein, however, is intended to
9 limit or prevent a Party from introducing evidence at trial to prove its case. The use of any
10 Protected Material at trial, however, is not addressed at this time, but may be the subject of future
11 application to the District Court Judge assigned to this matter as the need may arise. Unless
12 otherwise ordered or agreed in writing by the Producing Party, within sixty (60) days after the
13 final termination of this action, each Receiving Party shall either destroy all Protected Material,
14 or return all Protected Material to the Producing Party, at the election of the Producing Party. As
15 used in this paragraph, "all Protected Material" includes all copies, reproductions, scans, or any
16 other form of duplicating any of the Protected Material.

17 The Receiving Party must submit a written certification to the Producing Party (and, if
18 not the same person or entity, to the Designating Party) by the sixty day deadline that identifies
19 (by category, where appropriate) all the Protected Material that was destroyed or returned, as
20 applicable, and that affirms that the Receiving Party has not retained any copies, reproductions,
21 scans, or any other form of duplicating any of the Protected Material. Notwithstanding this
22 provision, Counsel are entitled to retain an archival copy of all pleadings, abstracts, motion
23 papers, transcripts, legal memoranda, correspondence, and attorney work product, even if such
24 materials contain, summarize, describe, reference, or refer to Protected Material, so long as
25 Counsel safeguards and limits access to that archival copy.

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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1. Exercise of Restraint and Reasonable Care in Designating Material for Protection.

3 Each Party or non-party that designates information or items for protection under this Stipulated
 4 Protective Order must take reasonable care to limit any such designation to specific material that
 5 qualifies under the appropriate standards. A Designating Party must take reasonable care to
 6 designate for protection only those materials, documents, items, or oral or written
 7 communications, or parts thereof, that qualify; such that other portions of the material,
 8 documents, items, or communications for which protection is not warranted are not swept
 9 unjustifiably within the ambit of this Stipulated Protective Order.

10 Designations that are shown to be clearly unjustified, or made in bad faith, or that have
 11 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
 12 development process, or to impose unnecessary expenses and burdens on other parties), expose
 13 the Designating Party to sanctions as provided for under the Local Rules and the Federal Rules
 14 of Civil Procedure.

15 If it comes to a Party's or a non-party's attention that information or items that it
 16 designated for protection do not qualify for protection, or do not qualify for the level of
 17 protection initially asserted, that Party or non-party must withdraw such mistaken designation
 18 and promptly notify all other parties, in writing, that it is withdrawing the mistaken designation.

19 5.2. Manner and Timing of Designations. Except as otherwise provided in this
 20 Stipulated Protective Order, or as otherwise stipulated, ordered, or agreed in writing or on the
 21 record, any material that qualifies for protection under this Stipulated Protective Order must be
 22 clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Stipulated Protective Order requires:

24 (a) For information in documentary form (apart from transcripts of
 25 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
 26 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" conspicuously on each page that
 27 contains Protected Material. If only a portion or portions of the material on a page qualifies for
 28 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by

1 making appropriate markings in the margins) and must specify, for each portion, the level of
 2 protection being asserted (either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

3 A Party or non-party that makes original documents or materials available for inspection
 4 need not designate them for protection until after the inspecting Party has indicated which
 5 material it would like copied and produced. During the inspection and before the designation, all
 6 of the material made available for inspection may be deemed “ATTORNEYS’ EYES ONLY.”
 7 After the inspecting Party has identified the documents it wants copied and produced, the
 8 Producing Party must determine which documents, or portions thereof, qualify for protection
 9 under this Order, then, before producing the specified documents, the Producing Party must affix
 10 the appropriate legend (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”) conspicuously
 11 on each page that contains Protected Material. If only a portion or portions of the material on a
 12 page qualifies for protection, the Producing Party also must clearly identify the protected
 13 portion(s) and must specify, for each portion, the level of protection being asserted (either
 14 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

15 (b) For testimony given in deposition or in other proceedings, that the Party or
 16 non-party offering or sponsoring the testimony identify on the record, before the close of the
 17 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
 18 of the testimony that qualify as “ATTORNEYS’ EYES ONLY.”

19 When it is impractical to identify separately each portion of testimony that is entitled to
 20 protection, and when it appears that substantial portions of the testimony may qualify for
 21 protection, the Party or non-party that sponsors, offers, gives, or requests to designate the
 22 testimony as protected, may invoke on the record (before the deposition or proceeding is
 23 concluded) a right to have up to ten (10) days after the date of mailing of the final transcript to
 24 identify the specific portions of the testimony as to which protection is sought and to specify the
 25 level of protection being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).
 26 Only those portions of the testimony that are appropriately designated for protection within the
 27 10-day period shall be covered by the provisions of this Stipulated Protective Order. If the right
 28 to designate testimony is exercised, the transcript shall be treated as ATTORNEYS’ EYES

1 ONLY.

2 Transcript pages containing Protected Material shall be separately bound by the court
3 reporter, who shall conspicuously affix to each such page the legend “CONFIDENTIAL” or
4 “ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty so designating.

5 (c) For information produced in some form other than documentary, and for
6 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
7 the container or containers in which the information or item is stored the legend
8 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only portions of the information or
9 item warrant protection, the Producing Party, to the extent practicable, shall identify the
10 protected portions, specifying whether they qualify as “CONFIDENTIAL” or as
11 “ATTORNEYS’ EYES ONLY.”

12 (d) For inadvertent Failures to Designate, that the Producing Party may cure
13 under the following circumstances. If corrected within thirty (30) days of disclosure, an
14 inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or
15 “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating Party’s right to
16 secure protection under this Stipulated Protective Order for such material. If material is
17 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” after the
18 material was initially produced, the Receiving Party, on timely notification of the designation —
19 thirty (30) days — must make reasonable efforts to assure that the material is treated in
20 accordance with the provisions of this Stipulated Protective Order, subject to the provisions
21 below.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

23 6.1 Meet and Confer. A Party that elects to initiate a challenge to a Designating
24 Party’s confidentiality designation must do so in good faith and must begin the process by
25 conferring directly with counsel for the Designating Party. In so conferring, the Designating
26 Party must explain the basis for its belief that the confidentiality designation is proper, and after
27 conferring with the challenging party, the Designating party would have an opportunity to
28 reconsider the designation. Upon notice, the Designating Party has seven (7) days, unless

1 otherwise agreed between counsel, to respond to the request for re-designation. A challenging
 2 Party may proceed to the next stage of the challenge process only if it has engaged, or in the
 3 event of non-cooperation attempted to engage, in this meet and confer process first.

4 6.2 Judicial Intervention. A Designating Party bears the burden of justifying a
 5 confidentiality designation. Either party may file a motion to challenge or to justify a
 6 confidential designation. Until the Court rules on the challenge, all parties shall continue to
 7 afford the material in question the level of protection to which it is entitled under the Producing
 8 Party's designation.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
 11 or produced by another Party or by a non-party in connection with this case only for prosecuting,
 12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 13 to the categories of persons and under the conditions described in this Stipulated Protective
 14 Order. Following final resolution of the litigation, a Receiving Party shall comply with the
 15 provisions of Section 4, above, and Section 11, below. Protected Material shall be stored and
 16 maintained by a Receiving Party at a location and in a secure manner that reasonably ensures that
 17 access is limited to the persons authorized under this Stipulated Protective Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 19 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
 20 disclose any information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Counsel of record in this action, as well as
 22 employees of said Counsel to whom it is reasonably necessary to disclose the information for
 23 this litigation;

24 (b) the Receiving Party himself or herself (if the Receiving Party is an
 25 individual) and, if the Receiving Party is a business entity or other organization, to the officers,
 26 directors, and employees (including In-house Counsel) of the Receiving Party to whom
 27 disclosure is reasonably necessary for this litigation;

28 (c) Retained Experts or Consultants of the Receiving Party to whom

disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgement and Agreement to Be Bound ” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material shall be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order. Any party seeking to use CONFIDENTIAL information during a deposition of a non-party shall obtain a statement on the record that the non-party deponent has agreed to abide by the terms of this Stipulated Protective Order.

(g) the author and named recipients of the document, persons who have previously had access to the documents or CONFIDENTIAL Information other than through discovery or disclosures in the litigation, and the original source of the information.

7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Retained Experts or Consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A),

(c) a designated member of the Receiving Party’s In-house Counsel (e.g. Findlay’s in-house trademark counsel);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure

1 is reasonably necessary for this litigation; and

2 (f) the author and named recipients of the document or the original source of
3 the information.

4 Nothing herein, however, is intended to prohibit or proscribe the ability of outside
5 counsel to provide to its client informed and meaningful advice, or to prevent counsel from
6 aggregating and generally summarizing counsel's interpretation of the implications of such
7 information as it relates to the litigation, so long as it will not reveal or disclose the specific
8 contents of any document or information, including any figures and statistics therein, designated
9 as "ATTORNEYS' EYES ONLY".

10 **8. PROTECTED MATERIAL IN OTHER LITIGATION.**

11 If a Receiving Party is served with a subpoena, or an order issued in other litigation or
12 Court proceedings, that requires disclosure of any information or items designated in this action
13 as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," the Receiving Party shall notify the
14 Designating Party, in writing (by electronic mail and/or fax, if possible) promptly and in no
15 event more than four (4) court days after receiving the subpoena or order but before the
16 scheduled date for production. Such notification shall include a copy of the subpoena or court
17 order.

18 The Receiving Party shall also immediately inform in writing the Party who caused the
19 subpoena or order to issue in the other litigation or proceeding that some or all the material
20 covered by the subpoena or order is the subject to this Stipulated Protective Order. In addition,
21 the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party
22 in the other action that caused the subpoena or order to issue.

23 The purpose of imposing these duties is to alert the interested parties to the existence of
24 this Stipulated Protective Order and to afford the Designating Party in this case an opportunity to
25 seek to protect its confidentiality interests in the court from which the subpoena or order issued.
26 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
27 of its confidential material. Nothing in these provisions should be construed as authorizing or
28 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

1 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately, (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this Order, and, (d) request that such person or party execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **10. FILING PROTECTED MATERIAL.**

10 In the event that any Party or non-Party decides to file with or submit to the Court any
11 Protected Material, Counsel shall take appropriate steps to ensure the continuing confidentiality
12 of the Protected Material, as follows:

13 10.1 Non-Dispositive Motions. A party’s or a non-party’s good faith designation of
14 Disclosure or Discovery Material as Protected Material under this Order shall constitute “good
15 cause” for protecting such materials from public disclosure. *See Kamakana v. Honolulu*, 447 F.3d
16 1172, 1179 (9th Cir. 2006) (“when a district court grants a protective order to seal documents during
17 discovery, ‘it has already determined that ‘good cause’ exists to protect this information from being
18 disclosed to the public by balancing the needs for discovery against the need for confidentiality.”)
19 (citation omitted). Accordingly, a Party or non-Party may file Protected Material with the Court
20 under seal in connection with the filing of a non-dispositive motion without filing a separate motion
21 for permission to file such materials under seal. In accordance with District of Nevada Local Rule
22 10-5, as it pertains to the filing of papers “under seal pursuant to prior court order,” any Protected
23 Material so filed shall state directly under the case number: “FILED UNDER SEAL PURSUANT
24 TO COURT ORDER DATED [Date of this Order].”

25 10.2 Dispositive Motions. A Party who seeks to file Protected Material with the Court in
26 connection with the filing of a dispositive motion shall (contemporaneously with the filing of its
27 dispositive motion) file a separate motion seeking an Order permitting the filing of such Protected
28 Material under seal. The motion to permit the filing of such Protected Material under seal shall be

1 accompanied by a memorandum of points and authorities that identifies compelling reasons for non-
 2 disclosure that are sufficient to overcome the strong presumption of public access to information in
 3 a court proceeding. *See Kamakana*, 447 F.3d at 1180 (“Those who seek to maintain the secrecy of
 4 documents attached to dispositive motions must meet the high threshold of showing that
 5 ‘compelling reasons’ support secrecy.”).

6 10.3 Protected Material in Court Documents. If a Party or a non-Party files a
 7 document containing Protected Material under seal (such as a motion, a memorandum of points
 8 and authorities, a declaration, etc.), the Party or non-Party filing the document shall, in addition
 9 to filing an unredacted version of the document under seal, file a public version of the document
 10 from which all Protected Material has been redacted.

11 MISCELLANEOUS.

12 11.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the
 13 right of any person to seek its modification by the Court in the future.

14 11.2 Right to Assert Other Objections. By agreeing to the entry of this Stipulated
 15 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
 16 producing any information or item on any ground not addressed in this Stipulated Protective
 17 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 18 the material covered by this Stipulated Protective Order.

19 11.3 Effect of Designation of Authenticity and Admissibility. The placing of any
 20 confidentiality designation or a production identification label on the face of any document shall
 21 not affect the document’s authenticity or admissibility in this action.

22 11.4 Continuing Jurisdiction. All provisions of this Stipulated Protective Order shall
 23 continue to be binding after the conclusion of this action in its entirety, unless subsequently
 24 modified by agreement between the parties or order of the Court, and the Court shall retain
 25 jurisdiction of this matter for the purpose of enforcing this Stipulated Protective Order.

26 12. COURT COMPLIANCE.

27 12.1 At its option, the Court may destroy or return to the filing party and documents
 28 filed under seal after the case is closed in a time frame convenient to the Court. Any action by

1 this Court must be preceded by an ex parte motion for an order authorizing the return of all
2 Confidential and Attorneys' Eyes Only Material to the party that produced the information or the
3 destruction thereof.

4 12.2 The Court may modify the terms and conditions of the Order for good cause, or in
5 the interest of justice, or on its own order at any time in these proceedings.

6 12.3 Without separate court order, the Protective Order and the parties' stipulation
7 does not change, amend, or circumvent any court rule or local rule.

8 **IT IS SO AGREED AND STIPULATED** this 21st day of December, 2012:

9 LEWIS AND ROCA LLP

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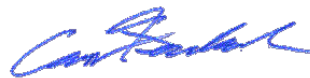
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18 Tel.: (702) 784-5258 (tel.)
19 Fax: (702) 784-5252 (fax)
20 Email: cfears@swlaw.com

21 Attorneys for Plaintiff
22 Robert Michael Nichols

23 **IT IS SO ORDERED:**

24 

25 UNITED STATES MAGISTRATE JUDGE

26 Dated: 1-7-2013

Exhibit A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of [print or type full company name and address], declare under penalty of perjury that I have read in its entirety and understand the Stipulation and Protective Order that was issued by the United States District Court for the District of Nevada on _____ [date] in the case of *Nichols v. Findlay Automotive Group, Inc.*, Case No. 2:12-cv-00093-KJD-VCF.

I agree to comply with and to be bound by all the terms of the Stipulation and Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt.

I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulation and Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Name: _____

Signature: _____

Date: _____